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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

MAGADDINO FUNERAL HOME, INC.
n/k/a MAGADDINO MEMORIAL
CHAPEL, INC.

Case No. 89-12783 K

Debtor

MEMORANDUM OF DECISION

The City of Niagara Falls took title to certain real estate of the debtor in a tax foreclosure, then the debtor filed for relief under the Bankruptcy Code and sued the City to regain title, alleging preference or fraudulent transfer. That action is still pending.

Adjacent to the land is a parking lot on another parcel, owned by the debtor. The value of the two parcels together is believed by all to be greater than the sum of the values of the two parcels separately.

Although the City, as record owner of 1338 Niagara Street, permitted that parcel to be offered on August 8, 1992, at auction at the same time as the debtor's adjoining parcel (1332 Niagara Street), it appears that the City demanded that (1) the properties not be offered as a combined whole, and (2) it be announced that 1338 Niagara Street would be sold subject to the City's demanded upset price of \$142,000. There were no bids for that parcel and only \$5,000 was bid for the adjoining parking lot.

Had the City offered to consider all reasonable offers

for the parcels, it is possible that a fair bid for the two parcels combined might have been received, and that a good-faith compromise could have been reached between the City and the debtor regarding allocation of proceeds. This would have resolved the litigation, yielded some assets for both the City and the other creditors of the debtor, and placed a new owner in possession of the real estate (possibly restoring it to the tax rolls of the City).

Now that the City's conduct has foreclosed that result, it makes a prayer for relief that defies credulity, in its overreaching. It asks that this Court direct abandonment of 1338 Niagara Street (the effect of which, under 11 U.S.C. § 544) would be to vest clear title in the City, free of any claim of the debtor), deny confirmation of the \$5,000 auction sale of the parking lot (one "Robert Redanz or assigns" was the successful bidder), and authorize the City to offer the two parcels for sale as a unit for the City's benefit only (the City to pay \$5,000 to the estate (plus \$100 to the bidder) for the parking lot within six months).

In response the debtor seeks denial of abandonment of 1338 Main Street, and (in the interest of finality of bankruptcy sales) confirmation of sale of the parking lot, despite the disappointing price.

The City's motion to abandon is denied, without prejudice to later renewal, because (1) the circumstances of this sale and the City's conduct (taken alone as well as in the context of the

pending Adversary Proceeding) raise question as to whether the failure to obtain any bid is a true measure of the value of the property, and (2) the allowable amount of the City's legitimate claims against the property remain undetermined.

The Confirmation of the sale of the parking lot parcel is continued to October 22, 1992, at 10:30 a.m. in Niagara Falls.

The U.S. Trustee is requested to advise the Court, before said date, of its position regarding whether that sale should be approved.

SO ORDERED.

Dated: Buffalo, New York
September 24, 1992



U.S.B.J.